

JAN 28 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORRIS S. MAXWELL; SHAWN R.
MAXWELL,

Plaintiffs - Appellants,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee of the Home
Equity Mortgage Loan Asset-Backed Trust
Series INABS 20007-A; et al.,

Defendants - Appellees.

No. 13-17350

D.C. No. 3:13-cv-03957-WHO

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Orrick III, District Judge, Presiding

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Morris S. and Shawn R. Maxwell appeal pro se from the district court's
judgment dismissing their action alleging federal and state law claims arising out

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of res judicata. *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005). We affirm.

The district court properly dismissed the Maxwells' action as barred by the doctrine of res judicata because the claims were raised, or could have been raised, in Morris Maxwell's prior bankruptcy action, which resulted in a final judgment on the merits. *See id.* at 987 (setting forth res judicata elements and requirements for identity of claims); *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 528-29 (9th Cir. 1998) (explaining that doctrine of res judicata "bars all grounds for recovery that *could have been asserted*, whether they were or not" and applies to matters decided in bankruptcy (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in denying the Maxwells' motion for a continuance of the hearing on defendants' motion to dismiss because the Maxwells did not demonstrate prejudice. *See United States v. 2.61 Acres of Land, More or Less, Situated in Mariposa Cty., State of Cal.*, 791 F.2d 666, 670 (9th Cir. 1986) (setting forth standard of review and the "four salient factors utilized for reviewing denials of requested continuances under the abuse of discretion standard" (citation and internal quotation marks omitted)).

We reject as meritless the Maxwells' contention that the dismissal of their

action deprived them of due process.

Appellees' motion for sanctions, double costs, and attorney's fees, filed on August 14, 2014, is denied without prejudice to the filing of a timely bill of costs and motion for attorney's fees under Fed. R. App. P. 39 and 9th Cir. R. 39-1. The Maxwells' request for an extension, filed on September 2, 2014, is denied as unnecessary.

Appellees' requests for judicial notice, filed on August 14, 2014 and October 22, 2014, are granted.

AFFIRMED.